89-1147

No.

Supreme Court, U.S.
FILED
DEC 11 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term. 1989

RONALD BIBACE, PETITIONER

v.

THE FLORIDA BAR

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

RONALD BIBACE, pro se
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STATEMENT OF THE ISSUES

1. Whether a State Supreme Court Rule which silences speech and writing should be tested under strict judicial scrutiny?

2. Whether the silencing of speech and writing about ethics complaints against lawyers can be considered de minimis under the First Amendment?

3. Whether protection of the reputation of lawyers can be considered a sufficiently compelling State interest to justify infringement upon First Amendment Rights?

4. Whether Rules made by a State Court producing probable Cause findings on complaints against lawyers that are less likely to occur by chance than one in one trillion trillion times are a violation of the Fifth and Fourteenth Amendment rights of the complainant and/or the public?

5. Whether the dictionary meaning and general use of the words "Clear and Convincing" is so different from the intended meaning by the United States Supreme Court of those words as a standard of proof as to be in violation of the Fifth and Fourteenth Amendments Rights of all those required to meet the standard?

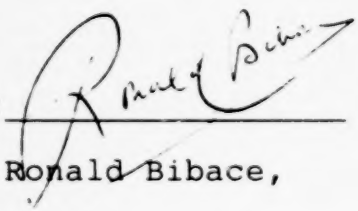
6. Whether protection of the private interest of a lawyer in his law practice and reputation is so much more substantial than the public's interest in a fairly and accurately functioning judicial system that the risk of an incorrect factual determination at a lawyer disciplinary procedure should be placed on the public?

7. Whether a person belonging to and/or a part of one branch of government may hold office in another?

CERTIFICATE OF INTERESTED PERSONS

Pursuant to Rule 21.1 (b) of this Court, appellant hereby certifies that, to the best of his knowledge, only the following persons or entities have an interest in the outcome of this case:

Ronald Bibace	Plaintiff/Petitioner
	Plaintiff
The Florida Supreme Court	Defendant-Appellee
The Florida Bar	Defendant Appellee

By: 

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STATEMENT OF OPINIONS DELIVERED BELOW

The Florida Supreme Court is the Court of original jurisdiction on this case and to date has delivered no official or unofficial report on any opinion.

STATEMENT OF JURISDICTION

The proceeding from which this appeal is being taken is The Florida Supreme Court, Case No. 74,570, styled "The Florida Bar re amendments to the Rules regulating The Florida Bar, (Grievance procedures and Confidentiality)."

The date of the entry of the judgment the review of which is being sought is September 13th, 1989. No re-hearing was requested.

There is no statutory provision conferring jurisdiction. Jurisdiction is sought under Part V, Rule 17.1 (c) "Jurisdiction on writ of certiorari" on the grounds that the Florida Supreme

Court has decided several important questions of Federal Law which should be settled by this Court. The following cases sustain jurisdiction:

1. Augustus vs Board of Public Instruction of Ascandia County, Florida, D.C. Florida 185 F. Supp. 450,453.

2. Johnson vs Interstate Transit Lines, CCA Utah 163 F. 2d 125, 128.

The Constitutional provisions which this case involves are the First, Fifth and the Fourteenth Amendments, of the United States Constitution, the pertinent text of which follow, as well as the implied constitutional provision covering the people's right to a separation of powers in government known to all beyond the need for multiple cites.

I. Amendment One: Congress shall make no law respecting an establishment of religion, or prohibiting the free

exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievance.

II. Amendment Five: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

III. Amendment Fourteen: No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

1. The Florida Supreme Court under the Florida Constitution Article V, Section 15, is charged with the responsibility for the disciplining of lawyers. The Florida Bar is an entity created by The Florida Supreme Court to act as its "arm", and to which lawyers desiring to practice law in the State of Florida must belong. The Florida Bar is run by a Board of fifty-one Governors, fifty of whom are Bar Members

elected by other Bar Members. To discharge its obligation to discipline lawyers, The Florida Supreme Court promulgates Rules and Regulations among which are Rules known as Rules regulating The Florida Bar, to which lawyers must adhere. The Florida Supreme Court has charged The Florida Bar with the authority and responsibility for enforcing the Rules of discipline subject only to Supreme Court review of all final decisions unfavorably impacting attorneys which constitute 4% of all complaints. Every four years The Florida Supreme Court reviews these Rules. This process involves submission by The Florida Bar of such changes as the Governors of the Bar have approved, to The Supreme Court. The Florida Supreme Court assigns a case number to the matter and permits interested parties to present their views

on the Rule changes. The present Case No. 74,570 is the one under which the four years review Rules is being considered. The case is styled: "The Florida Bar: - in re petition to amend the Rules regulating The Florida Bar- Grievance procedures and confidentiality". The First Amendment federal question on free speech covering Statement of the Issues 1, 2 and 3 is thus raised by the Court in the style of the case.

2. Under existing Rules (November-1989) a person who believes he has suffered wrong doing at the hands of his attorney may make an unsworn oral or written complaint to The Florida Bar. Staff counsel determines jurisdiction and where it exists, sends a copy of the complaint to the respondent attorney who has the right to reply. At this time, a copy of the letter to the respondent

is sent to the complainant who is admonished to keep the complaint confidential on pain of contempt of court and potential incarceration.

3. After the respondent replies staff counsel, after any investigation deemed necessary, makes the "first" determination of "Probable Cause", and where Probable Cause is believed to exist sends the case to a Florida Bar Grievance Committee for a "non adversary" hearing for the "second" determination of "Probable Cause". Under present Rules, the respondent attorney has an absolute right to a Grievance Committee Probable Cause Hearing prior to having the complaint submitted to a Referee Hearing.

4. The Probable Cause Hearing is conducted in the following manner:

The Chairman and the majority of Grievance Committee members are Florida

Bar members who are attorneys. The hearing is a "presentation" by a Florida Bar Staff counsel on a "neutral", non adversary basis at which hearing the respondent attorney has the right to be present with his own attorney, to speak or not to speak to the Committee as he chooses, to be placed under oath or not, as he chooses, to cross examine witnesses, and to present such evidence and witnesses of his own as he wishes. The hearings are conducted in the same geographical area in which the respondent attorney practices, and individual Committee member lawyers are not prohibited from serving on the Grievance Committee in cases where they personally know the accused. At these hearings, the complainant under the Rules has no rights at all except those of a witness if he is called. Thus a complainant

has no right to have a lawyer present, to bring witnesses, to cross examine the defendant, or his witnesses, or even to make a statement or be heard at all as a witness unless the Bar staff counsel wishes. Furthermore, the complainant has no right to demand a change of venue or to submit the Grievance Committee members to "voir dire". The standard of proof at this hearing by administrative practice is the "Clear and Convincing" standard of proof as established by the United States Supreme Court in the Santosky vs Kramer, 455 U.S. 758, Addington vs Texas, 441 U.S. 427, and Mathews vs Eldridge, 424 U.S. 344. A Grievance Committee decision of no Probable Cause is not appealable by the complainant.

5. A Grievance Committee finding of Probable Cause results in a Referee

Hearing at which the standard of proof as mandated by The Florida Supreme Court holding in Florida Bar vs Rayman, Fla., 238 So 2d 594 is Clear and Convincing. Approximately four per cent of all complaints now reach the Referee level. The statistical probability of this occurring by chance is less than one in one trillion trillion (1 in 1,000,000,000,000,000,000). A Referee Hearing results either in a recommendation to The Supreme Court for sanctions or a dismissal. On matters reaching it, The Supreme Court makes the final determination.

6. A Grievance Committee has the power and discretion to dismiss any complaint regardless of the evidence. The Committee also has the discretion to qualify the most grievous misconduct it is persuaded occurred as "minor" and

limit the sanction to a "private reprimand". The complainant is at all times powerless to impact the process in any way.

7. In January 1989, a special Florida Bar Disciplinary Review Commission chaired by Mr. William E. Loucks reported on the recommended Rule changes. The report characterized the Grievance Committee Probable Cause Hearings as "unfair" and the confidentiality Rule as "not passing constitutional muster".

8. The Florida Bar rejected the concept of eliminating both the confidentiality rule and the Probable Cause Grievance committee Hearings and made its own Rule change recommendations to The Supreme Court in Case No. 74,570.

9. Article II, Sections 3 and 5, of the Florida Constitution prohibits anyone who "belongs" to, or is a "part

of", one branch of government from holdi
office in another.

10. The practice of law in Florida is a privilege granted by the Supreme Court of Florida, subject inter-alia to a person becoming a member of and belonging to, The Florida Bar. From 1955 to January 1, 1987, the Court in its Preamble to the integration rule, specifically identified Bar member lawye
as "officers of the Court and part of the Judiciary".

A change in language but not substan
was introduced on January 1, 1987, deleting the aforementioned phrase, whil
elsewhere in the Bar rules, reference is made to lawyers as "officers of the legal system".

11. Florida Bar members have since 1955 held office all over the state, both in the Executive branch and in the

Legislative branch, in violation of the Florida Constitution and the Bar members' oath of office. No disciplinary action of any kind against anyone has ever been taken in the state, respecting these violations.

12. Appellant filed a petition/motion on June 29, 1989, addressing federal questions involving the Fifth and Fourteenth Amendments (Statement of Issues 4, 5 and 6.) supplemental petition/motion on July 20, 1989, addressing federal questions involving the implied constitutional clause guaranteeing the separation of powers doctrine (Statement of Issues No. 7.) and a consolidated petition/motion on September 8, 1989, as well as a total of nine supporting briefs. The consolidated petition/motion combined the first and second petition/motion and petitioned the Court to:

(a) Transfer the administration of the disciplining of lawyers from The Florida Bar to a newly appointed body consisting of a two thirds majority of non-lawyers.

(b) Abrogate all present disciplinary Rules and adopt Rules based on Florida Statute 120.53 impacting non-lawyers professionals, or in the alternative adopt Rules based on recommendations by the three special committees on disciplinary procedures who reported to The Supreme Court in the last twelve years.

(c) Establish and enforce a rule in compliance with Florida and United States Constitutions prohibiting Bar Members from holding public office outside the Judiciary Branch of Government.

13. Appellant's motion was denied by The Supreme Court of Florida by order

on September 13, 1989, and this is an appeal from that order.

14. As of this writing, no decision beyond the denial of appellant's consolidated petition/motion has issued from The Supreme Court.

ARGUMENT

A. Statement of the Issues 1, 2 and 3. Case No. 88-8477 CIV-Marcus styled "Doe vs The Supreme Court of the State of Florida and The Florida Bar" relating to the confidentiality Rule of The Florida Bar 3-7.1 has been accepted as a federal question. The case was heard in February 1989, and as of this writing has not been decided. A second very similar case No. 88-5570, Doe vs Gonzales, etal concerning confidentiality imposed on individuals through Section 112.317 (6), of the Florida Statutes resulted in the Statute being declared

unconstitutional by the District Court, the decision affirmed by the U.S. Court of Appeals for the Eleventh Circuit. At this writing the defendants are awaiting a re-hearing en banc.

Justice delayed is justice denied, and those who seek to deny justice are very good at delaying it. Thus appelant's brief is the first time this Court will have an opportunity to rule on this specific matter. Yet, this confidentiality has been imposed on the people of Florida for over twelve years. Furthermore, one keystone to the ability of dishonest lawyers to adversely impact the State is their immunity from meaningful discipline, which is greatly dependent on silencing those adversely impacted. A resolution of this matter a the earliest possible opportunity is of the greatest importance to every one

in this country. Furthermore, only this Court has the authority to rule that no State law or administrative rule of any kind infringing First Amendment Rights may be enforced prior to review by a Federal Judge. Such a ruling is the only way the people can be protected from the continual need to fight clearly unconstitutional new rules and laws through a system which takes five to seven years for final resolution while suffering the injustice in the meantime.

B. Statement of the Issues No.4.

The ability of the people of this State to achieve a fair and accurately functioning judicial system is a function in substantial part of the people's knowledge of and input in the lawyer disciplinary process. For over a quarter century The Florida Bar in principle an arm of The Florida Supreme Court but

in practice a virtually independent body has succeeded in maintaining a disciplinary system run all but exclusively by lawyers for lawyers. By excluding the complainant from being a party to the complaint The Florida Bar has successfully eliminated the complainant's standing under normal circumstances to argue against the constitutionality of the Bar Rules (except for the confidentiality rule). By moving the disciplining of lawyers from the Legislature to the Supreme Court in 1955 the legal profession has successfully eliminated any input, scrutiny, or accountability to the public. By creating a disciplinary system in which all parties in effective control are lawyers the legal profession has succeeded in eliminating from any effective role any non-lawyer desiring to make the legal

profession accountable to the people. This case is the only one known to petitioner that has ever been brought to a Federal Court on a non First Amendment matter. Standing was achieved because of a Supreme Court of Florida Rule permitting non-lawyers to be heard on Florida Bar Rules. A change in those Rules would eliminate petitioner's future standing and render the Federal Courts totally inaccessible to the people on this matter. This is therefore potentially a unique opportunity to address a matter of extreme importance.

The threshold statistical value defined by Civil Rights Statutes (Code of Federal Regulation-Judicial Administration Section 50.14-28CFR Chapter 1 (7-1-88 Edition) as "Probable Cause" for potential violations is one in twenty (.05). The smaller the value the greater

the probability of wrongdoing. Thus the statistical value of less than one in one trillion trillion (1 in 1,000,000,000,000,000,000) indicates wrongdoing of a very serious and ongoing nature. Furthermore, the wrongdoing has already been recognized and confirmed by The Florida Supreme Court's own Loucks Commission (January-1989). Still no change is forthcoming, which leaves this Court as truly the Court of last resort for the remedying of major injustices to the people.

C. Statement of the Issues No.5.

The standard of proof "Clear and Convincing" was established by the United States Supreme Court as an intermediate standard between "preponderance of the evidence" and "beyond a reasonable doubt" The dictionary meaning and general use

of "Clear and Convincing" is however "beyond all doubt", resulting in confusion, misinterpretation and erroneous views by State Courts on the meaning of the standard. Since the tool of law is language and the administration of justice requires precise use of that language and an appropriate term and definition can and has been crafted for the Supreme Court's intended meaning of Clear and Convincing, it is vital that the Court act on this matter.

D. Statement of the Issues No.6.

The State of Florida does not now enjoy a fair and accurately functioning judicial system because the risk of incorrect factual determination at all levels of lawyer disciplinary procedures is placed on the public through the use of the Clear and Convincing standard of proof. This decision having been made by The

Florida Supreme Court, this Court represents the only hope for relief. Furthermore, many other states suffer from the same problem. This Court's decision favoring appellant will also favorably impact every other state similarly situated and protect those states presently protected from changes arising from future unfavorable States Supreme Court decisions.

E. Statement of the Issues No.7.

The second keystone essential to the ability of the legal profession in advancing its own aims detrimental to others is its effective control throu a majority or a plurality of all branche of the federal and state governments. The further fact that every person or entity of any significance employs a lawyer allows the legal profession to exercise enormous power which it is quic

to direct against all those who raise their voice to object to the legal profession's wrongdoing. Thus combining control of all government with control of its disciplinary process the profession is free, uninhibited by the normal restraints in a democratic society, to do as it sees fit in its own best interest and to the detriment of the country as a whole. Thus access to the Court is financially out of reach for all but a privileged few who have the money, or whose case has high enough financial potential to attract a contingency fee lawyer. Thus the liability insurance crisis stifles innovation, chases doctors from the medical profession, closes down parks because of unaffordable premiums needed to cover costs of insurance, a substantial portion of which goes to lawyers. Thus attorneys

in some states hand pick and fund the election of Supreme Court Justices in their state and claim to own them. Thus Supreme Court Justices in some states grant awards perceived by many as unconscionable, a major part of which awards end up in the pockets of those attorneys who got those Justices elected. Thus foreigners are discouraged from investing in this country. Thus the Congress of the United States, a body containing more lawyers in it than any other governing body in the world, makes laws that help other lawyers in the country and that result so far in a bill to the tax payer on the Savings and Loan crisis alone of one hundred and fifty billion dollars at least. A decision stripping lawyers who are a part of the judiciary from holding office in any other branch of government will go a

long way towards the re-establishment of the financial and industrial pre-eminence of this country in the world and of the rights to justice of its people.

Finally the enforcing of the Constitution is this Court's only task. The elimination of the control by one class of men of all branches of government was the prime reason for the writing of the Constitution. Yet one class of men (people) does in fact control all government. That class is the legal profession. Regardless of the political stripe of the individual members, this class acts as one when it comes to its pocket book interests. It does so to the severe detriment of all others in this country. Its members are the most skilled in the land at communication and persuasion whether

they are defending right or wrong. Its members are in positions of control in both major parties, thus making impossible a political solution to the constitutional issue of separation of powers.

Psychological elitists, their perception of reality has been modified beyond their ability to perceive the harm they are doing the nation, or that what they are doing is fundamentally wrong. Thus the only relief available to the two hundred and fifty-five million people in this nation who are not lawyers lies in this Court.

Appellant believes that oral argument could assist the Court in the disposition of this case.

CERTIFICATE OF SERVICE

I hereby certify that three copies of the petition for writ of certiorari were sent by certified United States mail to:

Chief Justice Raymond Ehrlich
Supreme Court of Florida
Tallahassee, Fla. 32399-1925

and,

Mr. Stephen Zack, President
The Florida Bar
650 Appalachee Parkway
Tallahassee, Fla. 32301

This 16th day of January, 1990.

Ronald Biface, Pro se
Appellant

SWORN TO and subscribed before me this 16th day of January, 1990.

Notary Public

Notary Public, State of Florida
My Commission Exp. May 23, 1993
Bonded thru PICHARD Ins. Agency

IN THE SUPREME COURT OF FLORIDA

WEDNESDAY, SEPTEMBER 13, 1989

THE FLORIDA BAR **

RE: AMENDMENTS TO THE RULES ** CASE
REGULATING THE FLORIDA NO.74,570
BAR (GRIEVANCE PROCEDURES
AND CONFIDENTIALITY) **
**

The consolidated petition/motion for Americans for Justice, Inc. to participate in Rule Changes and to participate in oral argument is hereby denied.

The consolidated petition/motion for Americans for Justice, Inc. to participate in Rule Changes and to participate in oral argument by Ronald Bibace, pro se, is hereby denied.

The petitioner, Ronald Bibace, pro se, may present oral argument on the

Petition of The Florida Bar.

A True Copy

TEST:

Sid J. White,

Clerk Supreme Court

Sg

cc: Mr. Ronald Bibace

Honorable Stephen N.Zack

Honorable James Fox Miller

Honorable John F.Harkeness,Jr

Henry P. Trawick, Jr., Esquir

John A. Boggs, Esquire

Philip J. Chanfrau,Jr.,Esquir

Appendix (b)